



• **Board of Directors**

Real Property and Asset Management Committee

03/08/2016 Board Meeting

CONFIDENTIAL 8-6

Subject

Authorize entering into an agreement to purchase property from Delta Wetlands Properties located in Contra Costa, San Joaquin, and Solano Counties [Conference with real property negotiators; Property is approximately 20,369.80 acres, identified as Contra Costa County Assessor's Parcel Nos. 026-060-003-6, 026-060-007-7, 026-060-008-5, 026-060-015-0, 026-060-016-8, 026-060-017-6, 026-060-018-4, 026-060-019-2, 026-070-001-8, 026-070-006-7, 026-070-010-9, 026-070-011-7, 026-070-012-5, 026-070-013-3, 026-080-004-0, 026-080-005-7, 026-080-006-5, 026-080-007-3, 026-080-008-1, 026-080-009-9, 023-040-026-9, 023-040-027-7, 023-050-001-9, 023-050-002-7, 023-070-011-4, 023-070-012-2, 023-080-010-4, 023-080-011-2, 023-090-001-1, 023-090-003-7, 023-090-004-5, 023-100-001-9, 023-100-002-7, 023-100-004-3, 023-100-007-6, 023-100-008-4; San Joaquin County Assessor's Parcel Nos. 129-050-01, 129-050-02, 129-050-03, 129-050-04, 129-050-05, 129-050-06, 129-050-07, 129-050-08, 129-050-09, 129-050-11, 129-050-12, 129-050-13, 129-050-14, 129-050-15, 129-050-16, 129-050-17, 129-050-18, 129-050-19, 129-050-24, 129-050-25, 129-050-26, 129-050-27, 129-050-28, 129-050-52, 129-050-54, 129-050-55, 129-050-56, 129-050-60, 69-030-08, 69-030-09, 69-030-10, 69-030-11, 69-030-19, 69-030-20, 69-030-21, 69-030-22, 69-030-23, 69-030-24, 69-030-26, 69-030-27, 69-030-28, 69-030-29, 69-030-30, 69-030-31, 69-030-32, 69-030-33, 69-030-34, 69-030-35, 69-030-36, 69-030-37, 69-030-38, 69-030-39, 69-030-42, 69-030-44, 69-100-01, 69-100-02, 69-100-03, 69-100-04, 69-100-05, 69-100-08, 69-100-09, 69-100-10, 69-; and Solano County Assessor's Parcel No. 0090-060-010; agency negotiators: Jeff Kightlinger, Stephen Arakawa, and Bryan Otake; negotiating parties: Metropolitan and Delta Wetlands Properties; under negotiation: price and terms; to be heard in closed session pursuant to Gov. Code Section 54956.8]

Executive Summary

This action seeks modification of the Board's November 2015 authorization and direction to staff to enter into a twelve-month option-to-purchase agreement for approximately 20,369.80 acres of land in San Joaquin, Contra Costa, and Solano counties (the "Property") (**Attachment 1**) from Delta Wetlands Properties (Delta Wetlands) for a total purchase price of \$191 million and to authorize instead the execution of a direct purchase and sale agreement for acquisition of the Property for a total purchase price of \$175 million. Under this direct purchase approach, Delta Wetlands is proposing a reduced sale price in return for a shortened due diligence period and more simplified agreement structure. Staff seeks authority to enter into this purchase and sale agreement and the appropriation of funds for the acquisition price, escrow services, title insurance, transfer fees, and other transaction-related costs and

PRIVILEGED AND/OR WORK PRODUCT

The total amount requested for the acquisition and transaction-related costs is \$196 million. (**Attachment 2**) The estimated escrow period is 60 days, with at least 49 days available for due diligence review of title conditions and at least 54 days available for due diligence investigation of all conditions unrelated to title to the Property from the date of contract approval.

PRIVILEGED AND/OR WORK PRODUCT

During the due diligence period, staff and consultants will conduct chain of title review, Phase I environmental assessments, levee assessments, preliminary water rights analyses and other investigations of the Property. A report of the legal and physical condition of the Property will be delivered to the General Manager for decision to continue or terminate the transaction. A policy of title insurance will be obtained and a legal services contingency fund will be established to allow flexibility to respond to challenges to title and uses of the land should they arise.

Details

Background

Delta Wetlands Properties (Delta Wetlands) is an Illinois General Partnership owned by Zurich American Corporation (formerly Kemper Corporation) a Delaware corporation, and a subsidiary of Swiss insurance company, Zurich Insurance Group AG. Delta Wetlands owns four islands in the Sacramento-San Joaquin Bay-Delta (Delta) that were purchased in the mid-1980s. The four islands are Bacon Island and Bouldin Island in San Joaquin County; and Webb Tract and a portion of Holland Tract in Contra Costa County. Subsequently, Delta Wetlands acquired a small portion of Chipps Island in the Suisun Marsh for tidal marsh habitat restoration. Delta Wetlands is offering all five areas of land for sale in this transaction.

Just as in the previous option to purchase approach, the Property is still being offered for sale "as-is", with no seller express representations or warranties, under the new direct purchase structure. A large percentage of the deeds transferring title to Delta Wetlands were by quitclaim deeds. Unlike grant deeds, quitclaim deeds transfer the interest in land held by the grantor without warrant as to nature of the rights of the grantor. Therefore, Metropolitan staff and consultants will conduct due diligence investigations related to title and encumbrances on the Property during the first 49 days of due diligence. There will be a 5-day period for Delta Wetlands to cure any exceptions to title raised by Metropolitan, unless additional time is requested by Delta Wetlands.

Metropolitan staff shall also investigate the availability of title insurance coverage for the Property in order to minimize ownership risks. During the first 54 days of due diligence investigation, Metropolitan will also assess water rights, mineral rights, levee conditions, the state of buildings and improvements on the Property, environmental conditions, and other encumbrances associated with the Property.

In order to expedite the due diligence investigations, Delta Wetlands provided Metropolitan with copies of current preliminary title reports, prior title insurance policies, leases, fallowing notices, and other appropriate documentation for review. This review is ongoing and may not be completed until immediately prior to the end of the proposed due diligence period. Delta Wetlands also provided Metropolitan with immediate physical access to the property for purposes of inspection, and Metropolitan has already performed a preliminary assessment of the levees and has been meeting with the reclamation districts that maintain the levees. Prior to closing, Metropolitan will have completed a Phase 1 environmental assessment.

PRIVILEGED AND/OR WORK PRODUCT

In order to secure the dismissal of protests against its Storage Project water rights applications and challenges to the 2011 Place of Use Final EIR, Delta Wetlands entered into twelve protest dismissal agreements and settlement agreements with various parties, including California Urban Water Agencies, Department of Water Resources, U.S. Bureau of Reclamation, East Bay Municipal Utilities District, City of Stockton, Amador County, North Delta Water

Agency, Central Delta Water Agency and neighboring reclamation districts, San Joaquin County, and PG&E.

Delta Wetlands' water rights applications are still pending before the State Water Resources Control Board (State Board) that it would cancel prior to close of escrow.

PRIVILEGED AND/OR WORK PRODUCT

PRIVILEGED AND/OR WORK PRODUCT

Summary of Proposed Terms of Purchase

The proposed terms for a purchase and sale agreement for this Board's consideration are:

- *Purchase Price.* Metropolitan would purchase the Property for a total purchase price of \$175 million or \$8,591 per acre. The American Society of Farm Managers and Rural Appraisers' 2015 *Trends in Agricultural Land and Lease Values Report* (Trends Report) indicates that the originally proposed purchase price of \$191 million is within the reasonable range of values to comparable land in the Delta Region. Staff identified the comparable sales data used in the Trends Report. (Attachment 3)

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- *Non-Refundable Inducement Payment.* Upon signing the purchase and sale agreement, Metropolitan would make a direct payment of \$1.5 million to Delta Wetlands. This inducement payment would be credited to the total purchase price upon successful close of escrow.

PRIVILEGED AND/OR WORK PRODUCT

- *Sixty (60) Day Escrow.* Metropolitan will have 49 days for the review of title conditions and 54 days for the investigation of all conditions unrelated to title of the Property starting from contract approval. During these due diligence periods, Metropolitan will have access to the Property and relevant documents to conduct investigations related to: title; physical site characteristics; regulatory and environmental conditions; existing leaseholds and permitting requirements; and other due diligence matters. Closing would occur 60 days after execution of the purchase and sale agreement, unless extended by the parties. The intent of the parties is that the purchase and sale agreement would be executed upon approval of the Metropolitan Board, immediately triggering these timelines.
- *As-Is Acquisition.* The Property is being sold "as-is", with no seller express representations or warranties.
- *Release of Seller from Environmental Liability Claims by Metropolitan.* Metropolitan is required to release Delta Wetlands from any liability it might otherwise have to Metropolitan for any pollution or hazardous materials found on the Property after closing escrow under laws such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and state environmental laws. Metropolitan would neither indemnify nor defend Delta Wetlands in any third party environmental litigation in which Delta Wetlands is named as a defendant or a potentially responsible party.
- *Termination or Abandonment of CDWA Protest Dismissal Agreement.* As a condition of closing, Delta Wetlands will secure a formal order from the State Board cancelling its water rights permit application for the Storage Project. Delta Wetlands proffers this cancellation to Metropolitan as a means to establish the "abandonment or cancellation" of water rights permits terminating the CDWA protest dismissal agreement and other settlement agreements relating to the proposed water storage project

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PRIVILEGED AND/OR WORK PRODUCT

Staff recommends that the General Manager be authorized to enter into an agreement to purchase properties from Delta Wetlands Properties according to the terms set forth herein.

Policy

Metropolitan Water District Administrative Code Section 8201: Acquisition of Real Property

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action to enter into a purchase and sale agreement, making payments for the property purchase, and take other actions associated with Metropolitan's costs for the acquisition and assessment of real property is not subject to CEQA because it involves government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the state CEQA Guidelines). The proposed action is also exempt under the provisions of CEQA and the State CEQA Guidelines because the proposed transfer of ownership of interest in land does not include any activity or change in the existing uses of the property that may cause a significant effect on the environment (Section 15061(b)(3) of the state CEQA Guidelines). Furthermore, acquisition of the property will preserve the current open space, habitat, or historical resources and will allow restoration of natural conditions including plant or animal habitats. Accordingly, the proposed action qualifies under Class 25 Categorical Exemption (Section 15325 of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is exempt from CEQA and is otherwise not subject to CEQA under the general rule that CEQA applies only to projects with the potential for causing significant effects pursuant to Sections 15325 and 15061(b)(3) of the State CEQA Guidelines. In addition, the fiscal aspect of the proposed action is not subject to CEQA pursuant to Section 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options**Option #1**

Adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt from CEQA, and

- a. Appropriate an additional \$185.5 million for the purchase of the Property and related costs.
- b. Authorize the General Manager to enter into a purchase and sale agreement with Delta Wetlands Properties for a purchase price \$175 million and to pay additional costs associated with escrow services, title insurance, fees and other transaction-related costs.

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PRIVILEGED AND/OR WORK PRODUCT

The total amount of transaction related costs, including the \$10.5 million appropriation, would total \$196 million.

Fiscal Impact: Up to \$196 million, including the prior \$10.5 million appropriation.

Business Analysis: This action advances continued focus on Delta solutions that will help ensure a greater degree of reliability for State Water Project supplies.

Option #2

Do not authorize the General Manager to enter into a purchase and sale.

Fiscal Impact: Unknown

Business Analysis: Would be limited in pursuing all actions related to the properties that could provide greater degree of reliability for State Water Project supplies.

Staff Recommendation

Option #1



Fidencio M. Mares
Interim Assistant General Manager
Chief Administrative Officer

Date



Jeffrey Kightlinger
General Manager

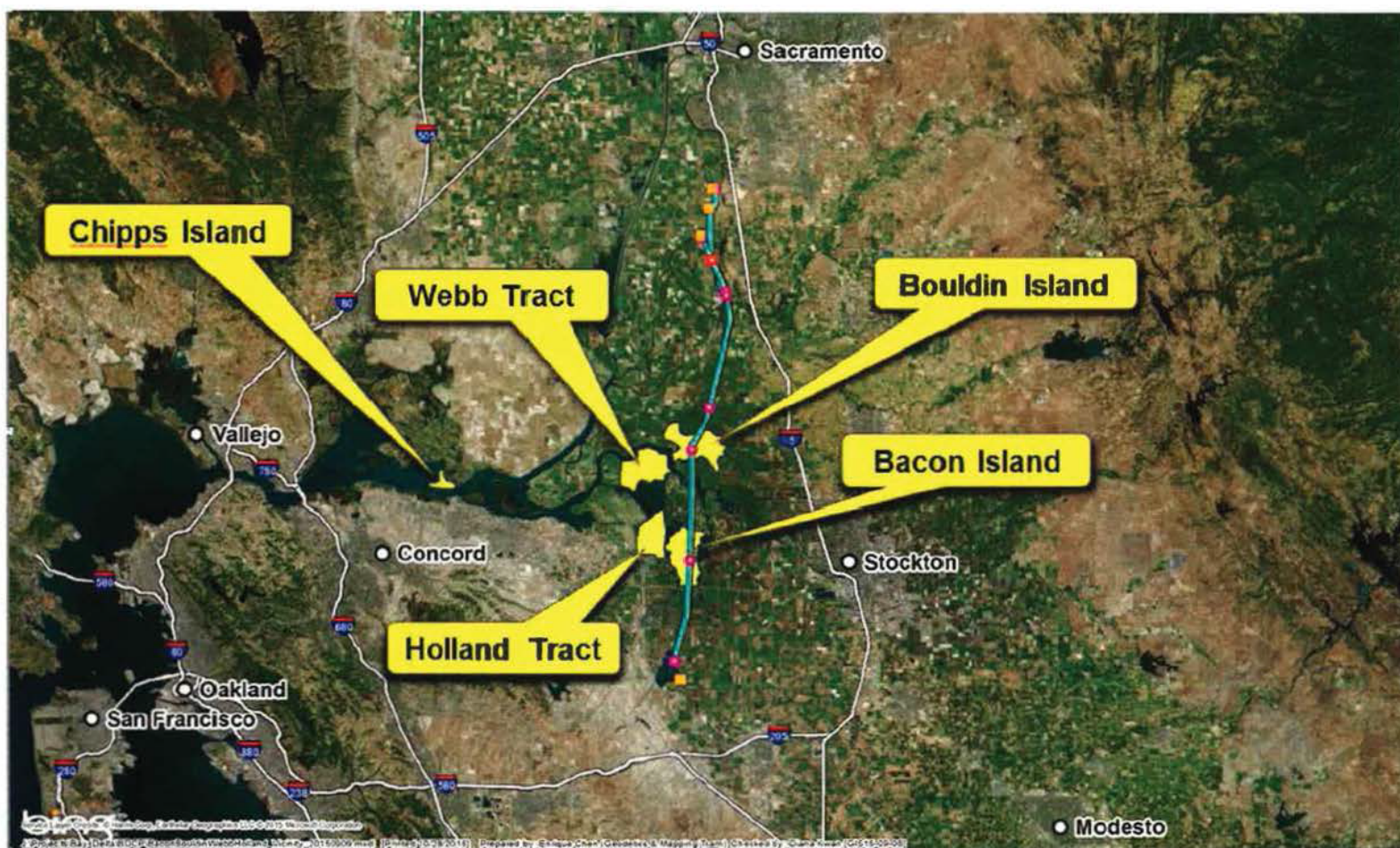
Date

Attachment 1 – Location Maps

Attachment 2 – Budget Breakdown

Attachment 3 – Comparable Sales Map

Ref# rpdm12642164



BACON ISLAND



OWNER NAMES:	Delta Wetlands Properties Delta Wetlands Properties Pt p
COUNTY:	San Joaquin
APNS:	129-050-01, 129-050-02, 129-050-03, 129-050-04, 129-050-05, 129-050-06, 129-050-07, 129-050-08, 129-050-09, 129-050-11, 129-050-12, 129-050-13, 129-050-14, 129-050-15, 129-050-16, 129-050-17, 129-050-18, 129-050-19, 129-050-24, 129-050-25, 129-050-26, 129-050-27, 129-050-28, 129-050-52, 129-050-54, 129-050-55, 129-050-56, 129-050-60
LAND USES:	AGRICULTURAL
TOTAL LOT ACRES:	5,603.17± acres
PLANTED ACRES:	4,860± acres Wheat – 11.9% Corn – 39.4% Alfalfa – 36.8% Oats – 4.3% Sunflower – 7.7%

BOULDIN ISLAND



OWNER NAME:	Delta Wetlands Properties
COUNTY:	San Joaquin
APNS:	069-030-08, 069-030-09, 069-030-10, 069-030-11, 069-030-19, 069-030-20, 069-030-21, 069-030-22, 069-030-23, 069-030-24, 069-030-26, 069-030-27, 069-030-28, 069-030-29, 069-030-30, 069-030-31, 069-030-32, 069-030-33, 069-030-34, 069-030-35, 069-030-36, 069-030-37, 069-030-38, 069-030-39, 069-030-42, 069-030-44, 069-100-01, 069-100-02, 069-100-03, 069-100-04, 069-100-05, 069-100-08, 069-100-09, 069-100-10, 069-100-11
LAND USES:	AGRICULTURAL
TOTAL LOT ACRES:	6,018.77± acres
PLANTED ACRES:	4,933± acres Corn – 81.1% Rice – 12.6% Tomatoes – 6.2 %

HOLLAND TRACT (portion)



OWNER NAMES:	Delta Wetlands Properties
COUNTY:	Contra Costa
APNS:	023-040-026-9, 023-040-027- 7, 023-050-001-9, 023-050-002-7, 023-070-011- 4, 023-070-012-2, 023-080-010-4, 023-080-011- 2, 023-090-001-1, 023-090-003-7, 023-090-004- 5, 023-100-001-9, 023-100-002-7, 023-100-004- 3, 023-100-007-6, 023-100-008-4
LAND USES:	AGRICULTURAL; VACANT; RECREATIONAL
TOTAL LOT ACRES:	3,007± of 4,256± acres
PLANTED ACRES:	3,020± acres Pasture – 100%

WEBB TRACT



OWNER NAMES:	Delta Wetlands Properties
COUNTY:	Contra Costa
APNS:	026-060-003-6, 026-060-007-7, 026-060-008-5, 026-060-015-0, 026-060-016-8, 026-060-017-6, 026-060-018-4, 026-060-019-2, 026-070-001-8, 026-070-006-7, 026-070-010-9, 026-070-011-7, 026-070-012-5, 026-070-013-3, 026-080-004-0, 026-080-005-7, 026-080-006-5, 026-080-007-3, 026-080-008-1, 026-080-009-9
LAND USES:	AGRICULTURAL
TOTAL LOT ACRES:	5,497.86± acres
PLANTED ACRES:	4,064± acres
	Corn – 100%

CHIPPS ISLAND (portion)



OWNER NAME:	Delta Wetlands Properties
COUNTY:	Solano
APNS:	0090-060-010
LAND USES:	Miscellaneous
TOTAL LOT ACRES:	243± acres
PERCENT IMPROVED:	0%

Delta Wetlands Land Budget Breakdown

Breakdown of this action is as follows:

	Previous Total Approp. Amt. (Nov 2015)	Current Board Action No. 2 (Mar 2016)	New Total Appropriated Amount
Labor (Studies and Property Investigations)	\$ 350,000	\$ 150,000	\$ 500,000
Real Property Research			
Title Review/Escrow Coordination			
Land Descriptions/Exhibit Maps			
Environmental Site Assessments			
Coordination			
Bay Delta Initiatives			
(Levee and Other Assessments)			
Water Rights Analyses			
Incidental Expenses			
(Transaction fees, prorated expenses, permit fees; property inspections;)		\$ 250,000	\$ 250,000
Professional/Technical (P&T)	\$ 125,000	\$ 3,875,000	\$ 4,000,000
Escrow			
Orange Coast Title Company (Title)			
Record of Survey			
WorleyParsons			
(Environmental Site Assessment Phase 1)			
AECOM, URS Corporation			
(Levee Integrity Assessment)			
JRP Historical Consulting			
(Water Rights Analyses)			
Real Estate Services			
Land Cost	\$ 10,000,000	\$ 165,000,000	\$ 175,000,000
Post-Close Legal Services		\$ 16,000,000	\$ 16,000,000
Remaining Budget	\$ 25,000	\$ 225,000	\$ 250,000
Total	<u>\$ 10,500,000</u>	<u>\$ 185,500,000</u>	<u>\$ 196,000,000</u>

Funding Request

Program Name:	Delta Wetlands Land Acquisition		
Source of Funds:	TBA		
Appropriation No.:	15494	Board Action No.:	2
Requested Amount:	\$ 185,500,000	Capital Program No.:	N/A
Total Appropriated Amount:	\$ 196,000,000	Capital Program Page No.:	N/A

SALES COMPARABLES

	Property Identification	APN	County	Zoning	Sale Date	Acres	Sale Price	Price/Acre
1	4 miles west of Stockton	131-080-12	San Joaquin	Agricultural	1/10/2014	211.99	\$1,500,000	\$7,076
2	Approx. 12 miles SW of Stockton	189-250-07	San Joaquin	Agricultural	1/31/2014	471.00	\$4,003,500	\$8,500
Subject	Delta Wetlands Properties	Various APNs in San Joaquin, Contra Costa, and Solano Counties	Various	Agricultural	N/A	20,369.80	\$175,000,000	\$8,591
3	7 miles NW of Stockton	069-080-03	San Joaquin	Agricultural	10/9/2014	215.00	\$1,900,000	\$8,837
4	13238 State Highway 160, Walnut Grove	142-0060-034	Sacramento	Agricultural	6/9/2015	90.11	\$810,000	\$8,989
5	8119 Jacobs Road, 5 miles west of Stockton	131-080-11, 131-200-05	San Joaquin	Agricultural	5/1/2014	287.58	\$2,875,800	\$10,000
6	1489 W. Undine Road, Tracy	191-180-02	San Joaquin	Agricultural	5/21/2015	427.59	\$5,250,000	\$12,278

